

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

MORKITER JONES

PLAINTIFF

V.

CIVIL ACTION NO: 1:18CV193-MPM-DAS

**JARED BOOTH;
CITY OF COLUMBUS, MISSISSIPPI,
PARTICULARLY COLUMBUS POLICE
DEPARTMENT; and,
UNKNOWN DEFENDANTS A-Z**

DEFENDANTS

**MOTION OF SEPARATE DEFENDANT, CITY OF COLUMBUS,
UNDER RULE 12(B)(6) TO DISMISS**

COMES NOW, the Separate Defendant, City of Columbus, Mississippi, by and through counsel, and files this Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and in support thereof would show unto the court the following:

1. The City of Columbus raised 12(b)(1) through 12(b)(6) in its Answer and Defenses filed on December 20, 2018 at Docket No. 6.

2. The City of Columbus hereby files this Separate Motion to Dismiss pursuant to Rule 12(b)(6) for Failure to State a Claim for Which Relief May be Granted due to violation of and non-compliance with the Mississippi Tort Claims Act by Plaintiff Jones. The City of Columbus states that the state law claims ought to be dismissed with prejudice inasmuch as such claims are futile and Plaintiff did not serve the pre-suit tort notice on the municipal clerk, failed to include the required statutory categories of information in her attempted pre-suit tort notice and the claims should be barred by the Statute of Limitations and full sovereign immunity as to all State law claims.

3. This motion is based on the allegations of the Complaint, the matters reflected in the court file, applicable law and Exhibits "A", "B" and "C", which are filed contemporaneously with this motion and incorporated herein by reference. This motion is also supported by Exhibit "D", Affidavit of Milton Rawle, former City Clerk of the City of Columbus at all times relevant.

4. City of Columbus reserves any and all other affirmative defenses not mentioned in this

motion and does not waive its rights to file any additional motions based on its defenses as set forth in its answer filed herein on December 20, 2018 at Docket No. 6.

RESPECTFULLY SUBMITTED, this the 26th day of March, 2019.

CITY OF COLUMBUS

BY: /s/ Jeffrey J. Turnage (MSB #9447)
JEFFREY J. TURNAGE

Of Counsel:

Mitchell, McNutt & Sams
Attorneys at Law
215 Fifth Street North
Post Office Box 1366
Columbus, Mississippi 39703-1366
Phone: (662) 328-2316
Fax: (662) 328-8035
jturnage@mitchellmcnutt.com

CERTIFICATE OF SERVICE

I, Jeffrey J. Turnage, certify that on this day, I electronically filed the foregoing pleading with the Clerk of the Court using the ECF system, which sent a true and correct copy of the foregoing pleading to the following:

Katherine Kerby, Esq.
Kerby Law Firm, LLC
P.O. Box 551
Columbus, Mississippi 39703
ksearcyk@bellsouth.net
Attorney for Defendant, Jared Booth

Brad Morris
Brad Morris Law Firm, PLLC
P.O. Box 2136
Oxford, MS 38655
info@bradmorrislawfirm.com
Attorneys for Plaintiff

SO CERTIFIED, this the 26th day of March, 2019.

/s/ Jeffrey J. Turnage